

## 1 SENATE BILL NO. 318

2 INTRODUCED BY T. MANZELLA

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS FOR THE JUDICIARY; RESTRICTING A JUDGE  
5 IN A CITY COURT FROM PRACTICING LAW IN THE CITY COURT; PROVIDING A DEFINITION FOR  
6 "MALFEASANCE" IN A JUDICIAL IMPEACHMENT SETTING; REQUIRING A JUDICIAL OFFICER TO  
7 DISQUALIFY THE JUDICIAL OFFICER IN CERTAIN PROCEEDINGS; PROVIDING FOR ENFORCEMENT  
8 OF COMPLAINTS AGAINST JUDICIAL OFFICERS; PROVIDING RULEMAKING AUTHORITY; AMENDING  
9 SECTION SECTIONS 2-2-136, 3-1-604, AND 5-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
10 DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 **SECTION 1. SECTION 2-2-136, MCA, IS AMENDED TO READ:**

15 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of**  
16 **complaint involving county attorney.** (1) (a) A person alleging a violation of this part or [section 4] by a state  
17 officer, legislator, judicial officer, or state employee may file a complaint with the commissioner of political  
18 practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act  
19 is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney  
20 that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the  
21 commissioner pursuant to 2-2-144(6). If a complaint is filed against the commissioner or another individual  
22 employed in the office of the commissioner, the complaint must be resolved in the manner provided for in 13-  
23 37-111(5).

24 (b) The commissioner may request additional information from the complainant or the person who is  
25 the subject of the complaint to make an initial determination of whether the complaint states a potential violation  
26 of this part.

27 (c) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of  
28 this part or [section 4], or does not contain sufficient allegations to enable the commissioner to determine

1 whether the complaint states a potential violation of this part.

2 (d) When a complaint is filed, the commissioner may issue statements or respond to inquiries to  
3 confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the  
4 procedural aspects and status of the case.

5 (2) (a) If the commissioner determines that the complaint states a potential violation of this part or  
6 [section 4], the commissioner shall hold an informal contested case hearing on the complaint as provided in  
7 Title 2, chapter 4, part 6. However, if the issues presented in a complaint have been addressed and decided in  
8 a prior decision and the commissioner determines that no additional factual development is necessary, the  
9 commissioner may issue a summary decision without holding an informal contested case hearing on the  
10 complaint.

11 (b) Except as provided in 2-3-203, an informal contested case proceeding must be open to the public.  
12 Except as provided in Title 2, chapter 6, part 10, documents submitted to the commissioner for the informal  
13 contested case proceeding are presumed to be public information.

14 (c) The commissioner shall issue a decision based on the record established before the  
15 commissioner. The decision issued after a hearing is public information open to inspection.

16 (3) (a) Except as provided in subsection (3)(b), if the commissioner determines that a violation of this  
17 part or [section 4] has occurred, the commissioner may impose an administrative penalty of not less than \$50 or  
18 more than \$1,000.

19 (b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner  
20 may impose an administrative penalty of not less than \$500 or more than \$10,000.

21 (c) If the violation was committed by a state employee, the commissioner may also recommend that  
22 the employing state agency discipline the employee. The employing entity of a state employee may take  
23 disciplinary action against an employee for a violation of this part, regardless of whether the commissioner  
24 makes a recommendation for discipline.

25 (d) The commissioner may assess the costs of the proceeding against the person bringing the  
26 charges if the commissioner determines that a violation did not occur or against the officer or employee if the  
27 commissioner determines that a violation did occur.

28 (4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter 4,

1 part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

2 (5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this  
3 part and [section 4]."

4

5 **Section 2.** Section 3-1-604, MCA, is amended to read:

6 **"3-1-604. Restrictions on municipal court judges and judges in city courts.** A municipal court  
7 judge or a judge in a city court or a city court of record may not practice law before the judge's own municipal  
8 court or hold office in a political party during the judge's term of office."

9

10 **SECTION 3. SECTION 5-5-401, MCA, IS AMENDED TO READ:**

11 **"5-5-401. Officers liable to impeachment. (1)** The governor, executive officers, heads of state  
12 departments, and judicial officers are liable to impeachment for felonies and misdemeanors or malfeasance in  
13 office.

14 (2) As used in this section, "malfeasance", when applied to a judicial officer, includes but is not limited  
15 to exceeding the role of the judge as provided in 1-2-101, including inserting what has been omitted from or  
16 omitting what has been inserted in a judicial decision or order."

17

18 **NEW SECTION. SECTION 4. JUDICIAL CONFLICT OF INTEREST -- RECUSAL -- DEFINITION. (1) A JUDICIAL**  
19 **OFFICER SHALL DISQUALIFY THE JUDICIAL OFFICER IN ANY PROCEEDING IN WHICH THE JUDICIAL OFFICER'S IMPARTIALITY**  
20 **MIGHT REASONABLY BE QUESTIONED, INCLUDING BUT NOT LIMITED TO THE FOLLOWING CIRCUMSTANCES:**

21 (A) THE JUDICIAL OFFICER HAS A PERSONAL BIAS OR PREJUDICE CONCERNING A PARTY OR A PARTY'S LAWYER  
22 OR PERSONAL KNOWLEDGE OF FACTS THAT ARE IN DISPUTE IN THE PROCEEDING;

23 (B) THE JUDICIAL OFFICER KNOWS THAT THE JUDICIAL OFFICER, THE JUDICIAL OFFICER'S SPOUSE OR  
24 DOMESTIC PARTNER, A PERSON WITHIN THE THIRD DEGREE OF RELATIONSHIP TO EITHER THE JUDICIAL OFFICER OR THE  
25 JUDICIAL OFFICER'S SPOUSE OR DOMESTIC PARTNER, OR THE SPOUSE OR DOMESTIC PARTNER OF A PERSON WITHIN THE  
26 THIRD DEGREE OF RELATIONSHIP TO EITHER JUDICIAL OFFICER OR THE JUDICIAL OFFICER'S SPOUSE OR DOMESTIC  
27 PARTNER IS:

28 (I) A PARTY TO THE PROCEEDING, OR AN OFFICER, DIRECTOR, GENERAL PARTNER, MANAGING MEMBER, OR

1 TRUSTEE OF A PARTY;

2 (II) ACTING AS A LAWYER IN THE PROCEEDING;

3 (III) A PERSON WHO HAS MORE THAN A DE MINIMUS INTEREST THAT COULD BE SUBSTANTIALLY AFFECTED BY  
4 THE PROCEEDING; OR

5 (IV) LIKELY TO BE A MATERIAL WITNESS IN THE PROCEEDING;

6 (C) THE JUDICIAL OFFICER KNOWS THAT THE JUDICIAL OFFICER, INDIVIDUALLY OR AS A FIDUCIARY, OR THE  
7 JUDICIAL OFFICER'S SPOUSE OR DOMESTIC PARTNER, PARENT, CHILD, OR ANY OTHER MEMBER OF THE JUDICIAL  
8 OFFICER'S FAMILY RESIDING IN THE SAME HOUSEHOLD HAS AN ECONOMIC INTEREST IN THE SUBJECT MATTER IN A  
9 CONTROVERSY OR IN A PARTY TO THE PROCEEDING;

10 (D) THE JUDICIAL OFFICER, WHILE A JUDICIAL OFFICER OR A JUDICIAL CANDIDATE, HAS MADE A PUBLIC  
11 STATEMENT, OTHER THAN IN A COURT PROCEEDING, JUDICIAL DECISION, OR OPINION, THAT COMMITS OR APPEARS TO  
12 COMMIT THE JUDGE TO REACH A PARTICULAR RESULT OR RULE IN A PARTICULAR WAY IN THE PROCEEDING OR  
13 CONTROVERSY;

14 (E) THE JUDICIAL OFFICER:

15 (I) SERVED AS A LAWYER IN THE MATTER IN CONTROVERSY, OR WAS ASSOCIATED WITH A LAWYER WHO  
16 PARTICIPATED SUBSTANTIALLY AS A LAWYER IN THE MATTER DURING THE ASSOCIATION;

17 (II) SERVED IN GOVERNMENTAL EMPLOYMENT AND IN THAT CAPACITY PARTICIPATED PERSONALLY AND  
18 SUBSTANTIALLY AS A LAWYER OR PUBLIC OFFICIAL CONCERNING THE PROCEEDING, OR HAS PUBLICLY EXPRESSED IN  
19 THAT CAPACITY AN OPINION CONCERNING THE MERITS OF THE PARTICULAR MATTER IN CONTROVERSY;

20 (III) WAS A MATERIAL WITNESS CONCERNING THE MATTER;

21 (IV) PREVIOUSLY PRESIDED AS A JUDICIAL OFFICER OVER THE MATTER IN ANOTHER COURT; OR

22 (V) HAS RECEIVED A CAMPAIGN CONTRIBUTION FROM A LAWYER OR PARTY TO THE PROCEEDING.

23 (F) A LAWYER OR PARTY TO THE PROCEEDING HAS MADE A CONTRIBUTION TO A POLITICAL COMMITTEE OR  
24 OTHER ENTITY THAT ENGAGED IN INDEPENDENT EXPENDITURES THAT SUPPORTED THE JUDICIAL OFFICER OR OPPOSED  
25 THE JUDICIAL OFFICER'S OPPONENT IN AN ELECTION;

26 (2) A JUDICIAL OFFICER SHALL KEEP INFORMED ABOUT THE JUDICIAL OFFICER'S PERSONAL AND FIDUCIARY  
27 ECONOMIC INTERESTS AND MAKE A REASONABLE EFFORT TO KEEP INFORMED ABOUT THE PERSONAL ECONOMIC  
28 INTERESTS OF THE JUDICIAL OFFICER'S SPOUSE OR DOMESTIC PARTNER AND MINOR CHILDREN RESIDING IN THE JUDICIAL

1 OFFICER'S HOUSEHOLD.

2 (3) A JUDICIAL OFFICER SUBJECT TO DISQUALIFICATION UNDER THIS SECTION, OTHER THAN FOR BIAS OR  
3 PREJUDICE, MAY DISCLOSE IN WRITING OR ON THE RECORD THE BASIS OF THE JUDICIAL OFFICER'S DISQUALIFICATION  
4 AND MAY ASK THE PARTIES AND THEIR LAWYERS TO CONSIDER, OUTSIDE THE PRESENCE OF THE JUDICIAL OFFICER AND  
5 COURT PERSONNEL, WHETHER TO WAIVE DISQUALIFICATION. IF, FOLLOWING DISCLOSURE, THE PARTIES AND LAWYERS  
6 AGREE, WITHOUT PARTICIPATION BY THE JUDICIAL OFFICER OR COURT PERSONNEL, THAT THE JUDGE SHOULD NOT BE  
7 DISQUALIFIED, THE JUDGE MAY PARTICIPATE IN THE PROCEEDING.

8 (4) FOR THE PURPOSES OF THIS SECTION, "JUDICIAL OFFICER" HAS THE MEANING PROVIDED IN 1-1-202.

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10 NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION. [SECTION 4] IS INTENDED TO BE CODIFIED AS AN  
11 INTEGRAL PART OF TITLE 2, CHAPTER 2, AND THE PROVISIONS OF TITLE 2, CHAPTER 2, APPLY TO [SECTION 4].

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13 NEW SECTION. SECTION 6. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE  
14 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS  
15 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID  
16 APPLICATIONS.

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18 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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